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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,397	09/16/2003	Robert L. Koelzer	01925-P0215A	2908
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ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619				
			EXAMINER KING, BRADLEY T	
			ART UNIT 3683	PAPER NUMBER

DATE MAILED: 12/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/663,397	Applicant(s) KOELZER, ROBERT L.	
	Examiner Bradley T. King	Art Unit 3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 69-91 is/are pending in the application.
- 4a) Of the above claim(s) 75 and 87-90 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 69-74, 76-86 and 91 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/13/2006 has been entered.

Election/Restrictions

Claims 75 and 87-90 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 08/04/2005.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 69-71 and 78-79 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 3541446.

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DE 3541446 discloses all the limitations of the instant claims including; an engine 10; a supply device 12 driven by said engine for supplying an agency; a motor 25 driven by the agency supplied by said supply device; a brake power source 39 driven by said motor; a brake system 40-41 powered by said brake power source; and an electronic control unit in communication with said supply device that controls that rate at which the agency is supplied by said supply device; wherein said electronic control unit has at least one input for receiving signals containing information reflecting air pressure; and wherein said electronic control unit determines the rate at which to cause said supply device to supply the agency to said motor based at least in part on the received information, thereby causing said motor to drive said brake power source at a desired rate.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 69-73, 76-79 and 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3529743 in view of Bruehmann et al (US#6089831).

DE 3529743 discloses a system including; an engine 10, a supply device driven by said engine; a motor driven by the agency supplied by said supply device, a brake

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power source driven by said motor; a brake system powered by said brake power source; and a controller 53 in communication with said supply device, said controller having at least one input for receiving signals containing information about the vehicle; wherein said controller determines the rate at which to cause said supply device to supply the agency to said motor, thereby causing said motor to drive said brake power source at a desired rate. Note column 5, lines 5-25 as well as sensors 10a, 112 and control devices 96 and 104. DE 3529743 lacks the explicit disclosure of receiving an input reflecting air pressure (claim 69) and/or air dryer temperature (claim 91). Air pressure and temperature are well known in the art and further demonstrated by Bruehmann et al for controlling compressor operation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize information pertaining to air pressure or air temperature as known and further taught by Bruehmann et al in the system of DE 3529743 to ensure proper air pressure necessary for operation or maintain air temperature within acceptable limits, thereby preventing damage to the system.

Regarding claim 70, see hydraulic pump 95 and hydraulic motor 100.

Regarding claim 71, see the reservoir 13.

Regarding claim 72, see input 10a and 89.

Regarding claim 73, note that engine speed is reflective of the throttle position as broadly required by the claim.

Regarding claim 77, note input 112.

Claims 74, 82-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3529743 and Bruehmann et al (US# 6089831), as applied to claim 69 above, in further view of in view of Eslinger et al (US# 5613744).

Regarding claim 74, DE 3529743 and Bruehmann et al disclose all the limitations of the instant claims with exception to the input of information relating to wheel speed. It is well known in the art and further taught by Eslinger et al to utilize wheel speed to control braking systems. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include wheel speed as taught by Eslinger et al as an input in the system of DE 3529743 to allow for ABS braking controls, thereby increasing the safety of the system.

Regarding claim 82, DE 3529743 and Bruehmann et al disclose all the limitations of the instant claims with exception to the particulars of the brake system. Eslinger et al teach an air braking system including a braking mechanism 18, a valve 30 and/or 38 connecting the reservoir to the braking mechanism, and a valve actuator connected to the valve (valve actuators are necessarily inherent for electrically controlled valves to operate). It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a reservoir, brake mechanism, valve and valve actuator as taught by Eslinger et al as an obvious means of carrying out braking actuation in the system of DE 3529743, thereby providing controllable brake operation. Regarding claims 83 and 84, The Examiner takes Official Notice that floating calipers and fixed calipers are well known in the art and recognized alternative structures suitable for an intended purpose. Eslinger et al further teach a brake shoe as well as the broad

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"caliper". Column 2, lines 60-65. It further would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize floating or fixed calipers or brake shoes in the system of DE 3529743 and Eslinger et al as known in the art and obvious alternative structures for brake actuation. Also note *Ryco, Inc. v. Ag-Bag Corp.*, 857 F.2d 1418, 8 USPQ2d 1323 (Fed. Cir. 1988).

Claims 80-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3529743 and Bruehmann et al (US# 6089831), as applied to claim 79 above in view of Koelzer et al (6439857).

DE 3529743 and Bruehmann et al disclose all the limitations of the instant claims with exception to the explicit disclosure of the details of the air compressor. Swash plate compressors are well known in the art and further taught by Koelzer et al in the brake environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a swash plate compressor as known in the art and further taught by Koelzer et al in the system of DE 3529743 as an obvious means of providing compressed air with a compact and structurally simple unit. Also note *Ryco, Inc. v. Ag-Bag Corp.*, 857 F.2d 1418, 8 USPQ2d 1323 (Fed. Cir. 1988).

Response to Arguments

Applicant's arguments filed 11/13/2006 have been fully considered but they are not persuasive.

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Regarding DE 35 29 743, please figure 4 of the reference which shows control devise 96 and/or 104 and brake power source 28.

Regarding the combination with Bruehmann, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is maintained that motivation can be found within the knowledge generally available to one of ordinary skill in the art. One of ordinary skill in the art is familiar with the necessity of maintaining adequate air pressure to ensure proper brake operation as well as monitoring temperature to prevent compressor damage. Further, monitoring these signals in the brake environment is demonstrated by Bruehmann. It is also clear that such pressure regulation (and therefore regulation of the driving of the compressor 28) is necessary in the system of DE 35 29 743 as excessive pressure would build up in the brake system if the pressures are not monitored. It is maintained that the rejections are proper.

Conclusion


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley T. King whose telephone number is (571) 272-7117. The examiner can normally be reached on 11:00-7:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James McClellan can be reached on (571) 272-6786. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BTK

 12/2/06
BRADLEY KING
PATENT EXAMINER